



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Roth Brothers, Inc.
File: B-235539
Date: August 2, 1989

DIGEST

1. Contracting officer could reasonably conclude that definitive responsibility criterion, requiring awardee to provide documentation of at least three completed projects of similar scope, has been met where prospective awardee submitted a list of three locations where it appeared the awardee had performed the same general type of work on smaller projects, and nothing on the face of the information submitted to the contracting officer prior to award called into question the correctness of that information.
2. Protester's post-award objection to the use of invitation for bids instead of Federal Supply Schedule is untimely since it concerns an alleged solicitation impropriety that should have been raised prior to bid opening.

DECISION

Roth Brothers, Inc., protests the award of a contract to Matika Electric and Construction Company, under invitation for bids (IFB) No. DACA27-89-B-0035, issued by the Army Corps of Engineers for the labor, material, and services required to modify and install 1,870 four-tube fluorescent lighting fixtures, for operation as two-tube fixtures with reflectors. Roth asserts that Matika did not meet the definitive responsibility criterion set forth in the solicitation, and that the Federal Supply Schedule, not an IFB, should have been utilized for this solicitation.

We deny the protest in part and dismiss it in part.

The IFB was issued on February 21, 1989. The specifications included the following:

"Experience Requirements: Contractor shall provide documentation of at least three previously completed projects of similar scope.

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Documentation shall include: name of project, size of project, name and telephone number of an individual in the customer's organization who can verify customer satisfaction.

Scope of work: Project entails the rework of fluorescent lighting troffers in Building 229 from an existing four-tube design to a highly reflective/efficient two-tube design."

Bids were opened on March 23, and three bids were received. Matika submitted the low bid of \$87,590, and Roth and Michigan Glass Coatings submitted equal second low bids of \$87,890. Subsequent to bid opening, the Army rejected the Michigan Glass bid as nonresponsive for failure to provide the required bid bond. The Army then began a pre-award survey of Matika during which Matika submitted information on three similar projects where it had installed specular reflectors, which it believed satisfied the solicitation's experience requirements. In addition, the Chief of the Engineering Division submitted information to the contracting officer explaining why Matika met the experience requirement. The Army evaluated all information on Matika, found the firm to be responsible, and on May 15 awarded Matika the contract. On the same day, Roth filed this protest. The Army has withheld notice to proceed pending resolution of this protest.

Roth principally contends that Matika should have been rejected as nonresponsive because it allegedly does not possess the experience required in the solicitation; Roth contends that Matika has told Roth that it had never manufactured or installed fluorescent specular reflectors in projects of this size or scope. Moreover, Roth claims to have undertaken its own on-site investigation of the three project sites that Matika listed as references after the Army submitted its report, and alleges that it found no evidence of any specular reflectors in any of the three locations.

The solicitation requirement that the prospective contractor provide evidence of a specified amount of experience is a definitive responsibility criterion. DJ Enterprises, Inc., B-233410, Jan. 23, 1989, 89-1 CPD ¶ 59. The scope of our review as to whether such a criterion has been satisfied is limited to ascertaining whether sufficient evidence of compliance has been submitted from which the contracting officer reasonably could conclude that the criterion has been met. The relative quality of the evidence is a matter for the contracting officer to determine, not our Office.

Allen-Sherman-Hoff Co.--Request for Reconsideration,
B-231552.2, Sept. 1, 1988, 88-2 CPD ¶ 202; BBC Brown Boveri,
Inc., B-227903, Sept. 28, 1987, 87-2 CPD ¶ 309.

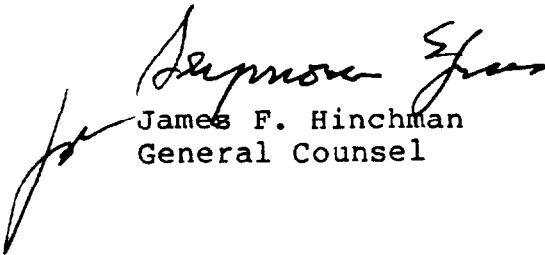
We find that the contracting officer reasonably concluded from the available information that Matika met the definitive responsibility criterion here. As required, Matika submitted to the contracting officer a list of three locations where the firm previously had performed similar projects using specular reflectors, presented names and telephone numbers of references who could verify customer satisfaction with its performance, and listed the size of these previous projects. There is nothing on the face of the information furnished that would lead the agency to question its accuracy or adequacy, and the Chief of the Engineering Division reviewed the information and specifically informed the contracting officer that the three projects Matika listed were in fact of similar scope to the present procurement, as required by the IFB; he explained that, even though Matika's projects were much smaller in size they were similar in scope in the sense that they involved the same type of work (IFB paragraph 3 defines "scope" by describing the project's nature--reworking lighting fixtures from a four-tube design to a highly reflective and efficient two-tube design--and not by describing the project's size). The Engineering Division informed the contracting officer that Matika's lack of experience in installing a large number of reflectors was not critical because installation is a relatively simple, highly repetitive task.

The alleged findings of Roth's own investigation do not change our conclusion. The alleged findings are unsupported by any independent evidence in the record, and the Army has not responded to them since they were presented for the first time in Roth's comments on the agency's report. In any event, we have held in similar circumstances that where nothing on the face of information submitted to the contracting officer with the offer calls into question the correctness of that information, the contracting officer is not obligated to conduct an independent investigation to confirm the accuracy of the information. See generally C. E. Wylie Constr. Co., B-234123, Apr. 25, 1989, 89-1 CPD ¶ 406 (the contracting officer has no obligation to investigate the adequacy of individual sureties' assets where nothing in the documentation furnished with the offer calls into question the assets).

Roth also contends that the Corps should have utilized the Federal Supply Schedule instead of an IFB for this procurement, which allegedly would have resulted in award to Roth.

We will not consider this contention. Alleged improprieties in a solicitation which were or should have been apparent prior to bid opening must be protested before bid opening to be timely and considered on the merits. Pulaski Furniture Corp., B-208884, Sept. 23, 1982, 82-2 CPD ¶ 265. Roth submitted a bid in response to the IFB, under which bids were opened on March 23, and did not object to the use of sealed bidding procedures until it filed its protest in our Office on May 15, after award had been made to Matika. This aspect of the protest therefore is dismissed as untimely.

The protest is denied in part and dismissed in part.



James F. Hinchman
General Counsel